Statewide Gay/Lesbian Meeting Discusses Proposed Amendments

A meeting was held in Denver on March 7 to discuss the Walta compromise amendment, State Representative Williams's legislative proposal, and People for a Stronger Colorado's proposed amendment. In attendance were approximately 120 gays and lesbians representing gay/lesbian organizations from all around Colorado. Each proponent of a proposal presented his proposal and then answered questions from the audience about the proposal. After this, members from the audience were given time to state their views about each proposal, including strategic or tactical issues. Finally, a nonbinding vote was taken; approximately 85 people voted. There were no votes for the Williams legislation, 24 votes for the Walta proposal, and 46 votes for the People for a Stronger Colorado proposal. In addition, 43 people voted that we need more time--that we need time to come together and be proactive rather than reactive.

The Williams proposal only addresses employment (not housing or public accommodations). It also contains language that was found insulting by many gays and lesbians (to the effect that an employer cannot take action against anyone for engaging in lawful activity off the employer's premises unless such activity hurts the reputation of the employer) and is also dangerous to gays and lesbians: If homosexual activity is determined to be unlawful (sodomy laws), then employers can take action against gays and lesbians.

The problems expressed regarding the Walta amendment included: (1) The many exemptions. What the exemptions do is

say that a person cannot discriminate against gays or lesbians in matters of employment, housing, or public accommodation unless such person fits into one of the many exemptions--then, the person can discriminate. It was argued that the Walta proposal contains more-encompassing exemptions than do the laws in several other states--some of the people at the meeting were arguing that if those states have laws without so many exemptions, why should we support a law (Walta) with so many exemptions? The more the exemptions, the more that discrimination is lawfully allowed. (Note, however, that actual word-for-word copies of the other laws were not at the meeting.) (2) This amendment would be setting a precedent for other states in the country to pass laws that are more and more restrictive of gay and lesbian rights, rather than heading more toward equality. (3) The prevention of "special rights": Remedies such as affirmative action would be difficult to apply to the gay and lesbian community because, for one thing, it is hard to figure out just how many of us there are and whether we have been systematically persecuted. However, many people were concerned about the Walta proposal's outright prohibition of these remedies for people discriminated against because of their sexual orientation. Singling out a group of people and preventing them from trying to obtain a remedy is discrimination. (4) The proposal's definition of "special rights" is loose enough that it is conceivable that some group could argue that freedom from discrimination in itself is a "special right" or that just

about anything else is a "special right," which would mean that these other possible "special rights" would be denied to persons based on sexual orientation. (5) Preventing "special rights" could adversely affect the "special rights" already in place for other minorities that have suffered systematic discrimination for many years. (6) The nonseverability clause in this proposal states that if any part of the proposal relating to nondiscrimination by private parties (as opposed to the state and its political subdivisions)--including the exemptions--is found to be unconstitutional in the courts, then the entire part of the proposal relating to nondiscrimination by private parties is void, leaving only the amendment part relating to discrimination by the state and its political subdivisions. This leaves only the legislative process to try to affect the nondiscrimination by private parties provisions, including the exemptions. Who has more impact over Colorado legislators? Gays and lesbians or the religious right? (7) This proposal comes out of the business community of Colorado Springs, a city faced with a boycott.

The proposal from People for a Stronger Colorado is a general civil rights amendment that generally states that no one will be discriminated against in matters of real property, public accommodations, education, or employment because of their gender, race, national origin, creed, sexual orientation, religious beliefs, physical or mental disabilities, ancestry, marital status, familial status, military status, or political affiliation. The only thing it

says about "special rights" is that it "shall not be construed to establish any affirmative action or quota fulfillment system." This statement does not create "special rights," nor does it prohibit them. This proposal also contains exemptions, but the exemptions are not as wide sweeping as the exemptions in the Walta proposal. This proposal is still in draft stage and needs some fine-tuning and rewording.

One of the big questions here is what is politically possible--although the third proposal was more liked, is it realistic to think that people will vote for it over the Walta proposal? The Walta proposal gives the religious right (or whatever you want to call them) what it wants (prohibition of "special rights," large exemptions), so maybe they would vote for it. The People for a Stronger Colorado is a pretty broad civil rights amendment--the religious right might not like that, so maybe they would all vote against it. Would the people of Colorado vote against the People for a Stronger Colorado amendment because it comes out of the gay community? Similarly, would the people of Colorado vote against the Walta proposal if the gay community supports it?

Is it better to vote in something (Walta) that gives us some rights and at the same time limits them and is, as many think, demeaning to us, or to have no rights voted in at all (in case the third proposal goes nowhere)? Do we want equal rights or compromised rights? Would compromised rights be a stepping stone on the way to equal rights, or would they be a very large hindrance to ever obtaining equal rights? Are we

willing to accept compromised rights? Do we deserve anything better? If we do, how do we go about getting them?

What if the religious right comes up with something that could severely limit our rights and at the same time be constitutional? In such a case, would it be better to already have something on the books in our favor, such as the Walta proposal, even if it does compromise our rights? Or would it be better to have nothing and continue the struggle for less compromising and less demeaning laws, even though that struggle would be all the more difficult?

There are so many questions to contemplate that the decision each one of us makes will probably ultimately come down to what each one of us thinks/feels is the right thing to do. This is the beginning of a long, painful struggle for rights. There is no easy answer. Compromising our rights even to the extent of characterizing ourselves as being dangerous to children (the Walta amendment has exemptions which allow people not to hire gay/lesbian babysitters or boyscout leaders, for example) may be politically expedient if the majority of people in Colorado will vote for it and give us some rights. It might protect us from something worse coming out of the religious right. Is that the right thing to do? That proposal gives gays and lesbians some rights; it also legislates certain aspects of homophobia and does not make gays and lesbians "equal" to others. The third proposal provides more protection for us and other minorities; ironically, because it does so, the majority might not vote it in. Or they might.

The reality is that there are many variables we simply cannot control. Unfortunately, we cannot predict how this all will play out. What if one or both of the proposed amendments pass? What if the religious right comes up with something legal yet harmful to us, and we have nothing in place to help us out at that point? What if neither of the proposals passes, and Amendment 2 is found unconstitutional? What if it is found constitutional? What if the issue stops at the Colorado Supreme Court? What if it goes to the U.S. Supreme Court and is held unconstitutional? Or constitutional? What will President Clinton be doing around this issue?

The answers to what to do with all this come down to each person's conscience; for some, the thinking will include a lot of political thinking, for others, the thinking will involve a lot of soul searching. We need to be very tolerant of each other's views through this process; they will vary greatly.

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Doug -
I'm submitting this for publication in Freedom Watch, if it meets your requirements.

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